

SOUTHERN DISTRICT OF NEW YORK

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In Re Namenda Direct Purchaser Antitrust Litigation

15-cv-7488(CM)

x

REQUEST FOR BRIEFING

McMahon, C.J.:

Counsel, I really meant it when I told Mr. Gerstein that I would hate to have you brief the issue of “large in relation to what.”

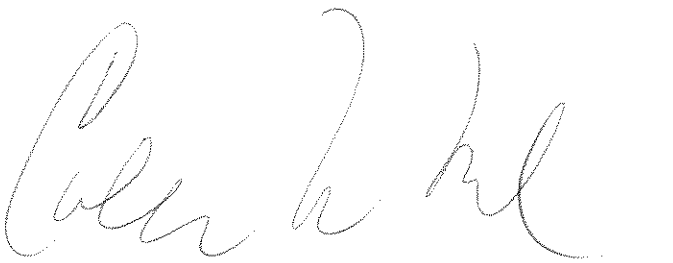
But I am exercising my prerogative to change my mind.

If you can, by the end of the week, get me something on this question. And whatever you do, don’t send me a brief that quotes a lot of language from Justice Breyer’s opinion in *Actavis*. I fear I have teased everything that I can out of the language of *Actavis*. I would rather know what other judges have done on this issue since *Actavis* (if anyone has done anything).

I am also interested in your thoughts on whether Forest’s decision not to waive attorney-client privilege plays into this issue.

Also, please do not parse my earlier opinions looking for “rulings” that you think I might have made on this issue. I assure you that I never gave it much thought until Mr. Gerstein raised it at the Final Pre-Trial Conference.

Dated: 15 October 2019

A handwritten signature in black ink, appearing to read "Colin H. Kelly", written over a horizontal line.

Chief Judge

BY ECF TO ALL COUNSEL